

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL D. SOUZA,)	
)	
Petitioner,)	CIVIL ACTION NO.
)	12-10705-DPW
)	
ANTHONY MENDONSA and MARTHA)	
COAKLEY, Attorney General,)	
)	
Respondents.)	

ORDER ON MOTION (#49) FOR
LEAVE TO APPEAL IN FORMA PAUPERIS
October 22, 2013

On April 12, 2012, Michael Souza filed his self-prepared Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus. At that time, he paid the \$5.00 filing fee. By Memorandum and Order dated August 23, 2013, Respondents' Motion to Dismiss Souza's Petition was granted. See Docket No. 45. In addition to filing a notice of appeal and motion for certificate of appealability, Souza filed a motion seeking "'in forma pauperis status' the 'appointment of counsel' (sua-sponta, based upon previously filed 'motion(s)' that sought same), a certificate of appealability and the assistance of this Court in perfecting this appeal so it conforms to proper rules of procedure." See Docket No. 49.

The filing fee for an appeal is \$455.00. Applications to appeal in forma pauperis are governed by 28 U.S.C. § 1915 and Federal Rule of Appellate Procedure 24. In pertinent part, § 1915(a)(1) provides: "any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein,

without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1). "Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress."

Id. Section 1915(a)(3) provides: that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith."

Similarly, Federal Rule of Appellate Procedure 24 provides:

(1) ... [A] party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

- (A) shows ... the party's inability to pay or to give security for fees and costs;
- (B) claims an entitlement to redress; and
- (C) states the issues that the party intends to present on appeal.

Fed. R. App. P. 24(a)(1).

Thus, two requirements must be satisfied in order to proceed on appeal in forma pauperis. First, the party must show an inability to pay. Second, the appeal must be brought in good faith. While today I have denied the petitioner's motion for a certificate of appealability, I am satisfied his efforts at appeal are in good faith. Nevertheless, petitioner has still not met his burden of establishing indigency. He failed to provide a certified copy of his prison account statement. Accordingly, it is hereby

ORDERED, that petitioner's motion for leave to appeal in forma pauperis is denied without prejudice. If petitioner wishes to proceed on appeal in forma pauperis, within 21 days of the date of this Order, he either must file a new motion to proceed in forma pauperis accompanied by a certified prison account statement. The Clerk shall provide petitioner with an Application to Proceed in District Court Without Prepaying Fees or Costs.

SO ORDERED.

/s/ Douglas P. Woodlock
DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE